IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case
Date of decision: 23rd March, 2006

Second Appeal No. 33 of 2003

Rakesh Mohan Purohit
S/o Late Anusuiea Prasad Purohit
R/o Village Fatehpur, Tehsil Haldwani
District- Nainital. ..... Defendant/Appellant

Versus

Laxman Singh Rawat
R/o Shri Nathu Singh
R/o E-59 Jude Farm Mukhani
Tehsil- Haldwani, District- Nainital ..Plaintiff/respondent

Shri B.D. Upadhyaya, learned counsel for the appellant.
Shri R.S. Bisht, learned counsel for the respondent.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Hon. Mr. Justice Prafulla C. Pant)

Date: 23.03.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

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Hon'ble Prafulla C. Pant J.

This appeal, preferred under Section 100 of Code of Civil Procedure, 1908, is directed against the judgment and decree dated 20.02.2003, passed in Civil Appeal No. 1 of 2001, whereby judgment and decree dated 20.07.2000 passed by trial court, in Civil Suit No. 111 of 1998 was confirmed.

2. Brief facts of the case are that a suit was filed by plaintiff/respondent for recovery of Rs. 78,500/- from the defendant/appellant. As per the plaint case, the plaintiff is a retired Range Office and defendant's father was his colleague. On 10.09.1995, defendant took a loan of Rs. 50,000/- from the plaintiff through Cheque No. 27307 dated 10.09.1995 and executed a pronote and a receipt. According to the plaintiff, the defendant purchased a vehicle by a loan taken from a

bank and for repayment of said loan to the bank, the aforesaid amount was taken from the plaintiff. However, when on 29.01.1998, the plaintiff demanded repayment by sending a notice, the defendant failed to repay the loan. As such, the plaintiff instituted a suit for recovery of money with interest.

3. Defendant contested the suit before the trial court and filed his written statement. However, he admitted having his father's close relation with the plaintiff. It is pleaded that it was the plaintiff, who took a loan of Rs. 50,000/- in the year 1994, which was paid back by the plaintiff to him by the aforesaid cheque. A specific plea was raised in the written statement that the plaintiff is not a registered money-lender, as such he cannot recover the loan in question by filing a suit.

4. On the basis of pleadings, the trial court framed following three issues:-

1. *Whether defendant took a loan of Rs. 50,000/- on the compound interest at the rate of 18% per annum through cheque No. 27307 dated 10.09.1995 from the plaintiff and repaid the installment of the loan taken from the bank with said sum?*
2. *Whether defendant is owner of truck registration No. DEL 4371, which was purchased by him after the loan is taken from a bank for it?*
3. *To what relief, if any, the plaintiff is entitled?*

5. After recording the evidence and hearing the parties, learned trial court decreed the suit with the costs for Rs. 78,500/- with 18% compound interest per annum there-on with quarterly rests for the period of pendency of suit till the payment is made. Aggrieved by said judgment and decree dated 20.07.2000, a civil appeal No. 1 of 2001, was filed by the defendant, which was also dismissed on 20.02.2003. Hence this Second Appeal by the defendant.

6. Heard learned counsel for the parties and perused the record.

7. Substantial question of law involved in this appeal is as under:-

1. *Whether the plaintiff/respondent, without holding a valid certificate of registration to carry on the business of money-lending, as required under Section 10 of U.P. Regulation of Money-Lending Act, 1976, could have entered into business of money-lending?*

8. The U.P. Regulation of Money-Lending Act, 1976 (U.P. Act No. 29 of 1976), came into force w.e.f. 20th July, 1976, when it was published in U.P. Gazette after the assent of the President received on 17th July, 1976. The preamble of said Act, shows that the Act was passed 'to provide, in the interest of general public, for the regulation of money-lending transactions and for all the money lenders, and for matters connected therewith or incidental thereto'.

The statement of objects and reasons of the Act, shows that there were complaints that many money-lenders have been indulging in malpractices in their dealing with economically weaker-sections of the public and that they have been exploiting them. In order to put an end to such malpractices and exploitation, it is necessary to regulate the business of money-lending and to provide for registration of money-lenders. Section 10 of U.P. Regulation of Money-Lending Act, 1976, provides that no person shall carry on the business of money-lending unless he holds a valid certificate of registration. Section 18 of the said Act, further provides that no suit on the basis of any loan, agreement or security referred to in sub-section (1) of Section 15 of the Act shall be instituted by any money-lender at the time of advancing such loan unless, the money-lender had a valid certificate of registration.

9. In the present case, admittedly plaintiff do not hold certificate of money-lending. In reply to the objections of the appellant that the plaintiff cannot maintain the suit for want of a valid certificate registration in his favour, learned counsel for the respondent, submitted that he is not doing the business of money-lending. Keeping in view the definition of ‘money-lender’, as provided in sub-section (6) of Section 3 of U.P. Regulation of Money-Lending Act, 1976, money-lender is a person, who carries on the business of money-lending. That being so, a stray transaction of a single loan, cannot be said to be a

business of money-lending. In ***Gauri Shankar Rai Vs. Kailash Rai 1998 ALL. L. J. 369,*** the Allahabad High Court has also held that the expression "carrying on" normally connotes repetition of acts in contradistinction to a solitary act of a particular nature. As such, this Court is of the opinion that since from the evidence on record, it is not clear that the plaintiff was doing business with many people or has done so, many times with the defendant, it cannot be said that the plaintiff was doing the money lending business. Therefore, it cannot be said that the suit for recovery of loan is not maintainable in such a single transaction. Accordingly, substantial question of law stands answered.

10. But in the case of friendly loan or loan given in single transaction, generally either there is nor rate of interest agreed between the parties or if at all it is reasonable one, at which the debtor would like to have loan as against the loan taken from the bank. Therefore, the rate of interest, claimed by the plaintiff i.e. 18% compound interest per annum is an excessive rate of interest, which is generally done in the business transactions and not in the friendly loans.

11. In the above circumstances, this Court is not inclined to interfere into concurrent finding of fact that the defendant has taken loan of Rs. 50,000/- from the plaintiff/respondent. However, it does feel necessary to set aside the impugned judgment and decree so far as it relates to granting relief of compound interest at

the rate of 18% per annum during the pendency of suit and thereafter till the payment is made. Accordingly, this Second Appeal is dismissed with the direction that the suit shall remain decreed for an amount of Rs. 78,500/-. However, the defendant shall not be liable to pay compound interest at the rate of 18% per annum after the date of institution of suit. Rather, the defendant shall pay 6% per annum simple interest on the amount of Rs. 78,500/- for the period of pendency of suit and appeal till the payment is made. Costs easy.

(Prafulla C. Pant, J.)

Dt: 23.03.2006
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